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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,637	12/28/2004	Rodney W. Tyler	1030-018	9141

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EXAMINER

SAFAVI, MICHAEL

ART UNIT PAPER NUMBER

3673

DATE MAILED: 11/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/519,637

Applicant(s)

TYLER, RODNEY W.

Examiner

M. Safavi

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-198 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-198 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-175, drawn to mesh enclosure and method of use.

Group II, claim(s) 176-182, drawn to method of forming a vegetated mat.

Group III, claim(s) 183-198, drawn to method of transplanting a vegetated mat.

The inventions listed as Groups I, II, and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The special technical feature of Group I is forming and using a mesh enclosure containing a filling. The special technical feature of Group II is forming a vegetated mat by first applying a sheet over a substrate then applying netting over the sheet then applying compost over the netting and, then applying plant material to the compost. The special technical feature of Group III is moving a netting strip from a sheet to a transplantation site.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows: There are eight Groups of species from which Applicant must elect. *Applicant must elect a single species from each of the following eight Groups of species.*

Group I, (as to the filling): Applicant shall elect a single species of filling from between each of claims 27-76.

Group II, (as to the enclosure): Applicant shall elect a single species of enclosure from between each of claims 79-83.

Group III, (as to filling supplement): Applicant shall elect a single species of filling supplement from between each of-- seeds, spores, plugs, sprigs, fertilizer, flocculant, chemical binder, water absorbent, herbicide, insecticide and pesticide.

Group IV, (as to irrigation hose): Applicant shall elect a single species of hose from between each of-- hose within the mesh; hose adjacent, (external), the mesh.

Group V, (as to application of predetermined structure): Applicant shall elect a single species of predetermined structure from between each of-- archway; arbor; pergola; rafter; purlin; column; balustrade; trellis; post; pedestal; (statue); ornament; planter; a roof.

Group VI, (as to mode of filling): Applicant shall elect a single species of mode of filling from between each of-- manually; blower; auger; chipping; grinding; shredder; chopper.

Group VII, (as to gathering): Applicant shall elect a single species of gathering from between each of-- spooling; palletizing.

Group VIII, (as to method of assembly): Applicant shall elect a single species of method of assembly from between each of-- filled prior to placing the tubular mesh in-situ; filled subsequent to placing the tubular mesh in-situ.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims

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subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Group I: Each of the claims listed in the above Group I species corresponds respectively to that particular species recited within the respective claim.

Group II: Each of the claims listed in the above Group II species corresponds respectively to that particular species recited within the respective claim.

Group III: Claim 147 corresponds to each of the particular species listed within Group III.

Group IV: Claim 119, 120, and 132-135 corresponds to the particular species of hose within the mesh.

Claim 121 corresponds to the particular species of hose adjacent, (external), the mesh.

Group V: Claim 160 corresponds to each of the particular species listed within Group V.

Group VI: Claim 124 corresponds to the particular species directed to filling by blower.

Claim 125 corresponds to the particular species directed to filling by auger. shredder; chopper.

Claim 153 corresponds to the particular species directed to filling by chipping device.

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Claim 154 corresponds to the particular species directed to filling by grinding device.

Claim 156 corresponds to the particular species directed to manually filling

No claim particularly corresponds to either of the species of filling by shredder device and filling by chopper device. Claim 124, however, is generic to both of these species.

Group VII: Claim 142 corresponds to the particular species of spooling.

Claim 143 corresponds to the particular species of palletizing.

Group VIII: Claim 157 corresponds to the particular species of filling the tube subsequent to placing the tubular mesh in-situ.

Claims 130 and 144 correspond to the particular species of filling the tube prior to placing the tubular mesh in-situ.

The following claim(s) are generic: 1, 122, 123, and 124.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Each of the species listed within each of the Groupings of species are mutually exclusive one from another. Each of the species listed within each of the Groupings of species cannot be used or practiced with any other listed species from within the same Group. As an example, the special technical feature of filling as by auger is directed to an auger assembly while the filling as by blower is directed to a blower assembly.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354

M. Safavi
October 02, 2006